Before the
Federal Communications Commission
Washington, D.C. 20554

Technology Transitions Policy Task Force Seeks Comment on Potential Trials	))	GN Docket No. 13-5

REPLY COMMENTS OF THE NEW JERSEY DIVISION OF RATE COUNSEL AND THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

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SUMMARY

The New Jersey Division of Rate Counsel ("Rate Counsel") and the National Association of State Utility Consumer Advocates ("NASUCA") (collectively, "Consumer Advocates") respond to comments concerning potential technology trials. Consumer Advocates do not repeat the various analyses and recommendations that are set forth in Rate Counsel's initial comments.

Consumer Advocates concur with comments that urge the Federal Communications Commission ("FCC" or "Commission"), before embarking on trials, to expend its efforts first to resolve major pending policy matters, such as making a finding that VoIP is a telecommunications service. A clear policy foundation is essential for successful trials. While, it is not evident that trials, *per se*, are necessary, Consumer Advocates certainly welcome the collection of data and information regarding the implications of the ongoing transition to new technologies for consumers and state regulators, and the consequences for network reliability, affordability, and consumer protection.

Whether transitions occur within the framework of an official trial or through other regulatorily-approved events, consumers should be better off as a result of their migration from the TDM network and their migration to new technology should be voluntary. The FCC, in coordination with state regulators, should dictate the parameters of the transition, and should modify regulatory oversight based on empirical evidence regarding the structure of relevant markets. During the transition, the FCC should not lose sight of the key goals of consumer protection, universal service, network reliability, consumer choice (especially if new technology will raise prices or jeopardize public safety), affordability, and the interconnection of carriers' networks at reasonable rates, terms and conditions.

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I. INTRODUCTION

The New Jersey Division of Rate Counsel ("Rate Counsel") and the National Association of State Utility Consumer Advocates ("NASUCA")[1] (collectively, "Consumer Advocates")[2] hereby submit reply comments regarding the request for comment by the Technology Transitions Policy Task Force of the Federal Communications Commission ("FCC" or "Commission") on potential Internet protocol ("IP") trials.[3]

The Public Notice elicited comments from a broad segment of industry participants, among them residential consumers and public advocates, as well as large users. Comments were

[1] NASUCA is a voluntary association of advocate offices in more than 40 states and the District of Columbia, incorporated in Florida as a non-profit corporation. NASUCA's members are designated by laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General's office). NASUCA's associate and affiliate members also serve utility consumers but are not created by state law or do not have statewide authority. NASUCA did not submit initial comments in this proceeding.

[2] Rate Counsel submitted initial comments in this proceeding.

[3] FCC Public Notice, "Technology Transitions Policy Task Force Seeks Comment on Potential Trials," GN Docket No. 13-5, DA 13-1016, rel. May 10, 2013 ("Public Notice").

also filed by incumbent local exchange carriers ("ILECs") (small and large), cable companies, competitive local exchange carriers ("CLECs"), wireless carriers; and state public utility commissions. Many of the commenters have participated innumerous proceedings before the Commission that address the legal and policy frameworks in which various new technology platforms will be used to provide services to consumers. Thus, the comments on the Task Force's Notice were not made and cannot be evaluated in a vacuum. Rate Counsel, in its role as a consumer advocate, focused its initial comments on consumer impacts and on the *process* for ensuring that any trials produced useful, detailed information about real-world problems. Others, however, like Rate Counsel, have raised legitimate concerns about the efficacy of proceeding with all or most of the proposed trials until the FCC has addressed several fundamental issues that are the subjects of pending proceedings before the Commission. These issues concern, among other things, the regulatory status of services offered using IP technology (e.g., VoIP) and the application of Section 251/252 interconnection protections with respect to IP interconnection, as well as issues still unresolved from the Commission's recent restructuring of the USF/ICC frameworks. Industry participants and others also suggest that there may be other, less costly and less disruptive means to gather much of the information the Task Force seeks to obtain through the trials.

Consumer Advocates submit that these concerns should be carefully considered before the Task Force puts consumers and providers through the cost and inconvenience of any technology transition trial. If and when the Commission decides to proceed with technology transition trials, Consumer Advocates continue to urge it to ensure that the trials are conducted in a manner that preserves consumers' rights to reliable and affordable services, respects consumer choice, and minimizes disruption.

Most parties who commented agree with Consumer Advocates that consumer participation should be voluntary, consumers should have the option to revert back to traditional landline service after the trial, the FCC should gather and report data publicly, public safety is of paramount importance, and state regulators should be involved in the trial selection and implementation.

However, the two largest ILECs, Verizon and AT&T, do not perceive any problems with regulation, jurisdiction, and transition, provided that the trials proceed according to their individual business plans. Secure in its market power, Verizon (along with its wireless affiliate) deems both the trials *and* any further regulatory involvement in technology transitions to be unnecessary: It assures the Commission that the marketplace will take care of all outstanding concerns about these transitions. AT&T sees no need for any technology trial except on the specific terms it proposed to the Commission last fall – the wire center (geographic) IP trials – which AT&T envisions as leading to a hard cutover from TDM to IP platforms – and full deregulation –in 2018. This AT&T proposal drew resounding objections from the vast majority of parties who filed comments with the Commission. Rate Counsel strongly opposes both Verizon's laissez-faire approach and AT&T's attempt to dictate the regulatory parameters for an IP transition. Technological evolution has indeed been the path of the telecommunications industry, but always within a regulatory framework that ensures universal, affordable, high-quality service and the necessary protections from the abuse of market power.

II. TECHNOLOGY TRIALS, IF AND WHEN THEY OCCUR, SHOULD BE PREDICATED ON A SOUND PUBLIC POLICY FOUNDATION.

A. The Commission should heed recommendations to prioritize its efforts, by first resolving outstanding foundation issues that are before the FCC in numerous other open proceedings, before considering the need for technology trials.

Initial comments make clear that the attempt to construct well-defined and productive technology trials will be confounded by unresolved and highly important legal and policy questions – some of which have been pending before the Commission for many years. For example, the California Public Utilities Commission ("CPUC") stated: "the CPUC believes that the FCC must address an array of legal/regulatory questions, some immediate and some long-standing, before forging ahead with any trials or 'regulatory experiments."[4] CPUC identifies the following legal/regulatory questions as requiring attention – "the extent to which consumer participation in the trials will be voluntary, the role of the states (especially where the trials might conflict with state basic service, carrier-of-last-resort, and other state laws and rules), and the legal status of VoIP and other IP-enabled technologies (at least for purposes of the trials)."[5] CPUC points to other important concerns about the legal and regulatory context for trials that were raised by

[4] California Public Utility Commission and the People of California, at 2.

[5] Id. See also Michigan Public Service Commission ("MPSC"), at 7-8.

parties in earlier comments responding the AT&T and NTCA petitions.[6]

Cbeyond, EarthLink, Integra, Level 3, and tw telecom ("CLEC Coalition") identify other unresolved pending issues of critical interest to competitors: "the adoption of rules that (1) require incumbent LECs to comply with their statutory duty to establish VoIP interconnection agreements on just, reasonable, and nondiscriminatory terms and conditions; and (2) constrain incumbent LECs' exercise of market power over last-mile connections to businesses."[7] As the CLEC Coalition aptly explains, "[s]uch rules would address issues that would not arise but for the technology transitions because, absent Commission action, incumbent LECs will use the replacement of legacy technology with next generation technology to deny competitors interconnection and wholesale access to incumbent LEC last-mile facilities on just, reasonable, and nondiscriminatory rates, terms, and conditions."[8] CLECs are not alone in expressing concerns that trials are premature if the Commission does not take affirmative steps to ensure providers' legal rights with regard to IP interconnection. NTCA-The Rural Broadband

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[6] As noted by CPUC (at 3):

> The Pennsylvania PUC urged that outstanding federal-state issues be addressed in already-open proceedings (and that the IP Petitions be denied); it worried that the proposed trials, were they to go forward without rulings on these issues, might constitute a de facto attempt to "rewrite federal law." The USF Joint Board and NARUC also asked that the AT&T Petition for trials be denied, and urged the Commission to decide outstanding legal issues in the USF/Interconnection proceeding where the issues have already been framed. COMPTEL (the competitive carriers) asserted that "any test of the transition" should be preceded by the development of a standard IP interconnection agreement which would be "compliant with sections 251 and 252, [and] which will be filed and available for opt-in by other carriers to curb further disputes ... before [the incumbent carrier is] allowed to shut down its TDM network, even for a 'test'." Sprint Nextel ask that the Petitions be denied, and that the Commission "immediately and explicitly re-affirm that Sections 251 and 252 apply to IP voice interconnection."

Footnotes omitted.

[7] CLEC Coalition, at 3.

[8] Id.

Association ("NTCA"), speaking for small, largely rural ILECs, presents cogent arguments along these same lines,[9] as does the MPSC.[10]

Instead of VoIP trials, Sprint Nextel Corporation ("Sprint") recommends "forceful Commission action so that carriers ready to exchange voice traffic in IP format, such as Sprint, can do so with other carriers that are equipped to do so but are delaying for anticompetitive or other reasons."[11] Specifically, Sprint recommends that the Commission "complete the pending rulemaking on intercarrier compensation and immediately mandate a transition to the exchange of voice traffic in IP format."[12] Sprint's comments demonstrate that, in many ways, the IP transition is already occurring – albeit piecemeal. It is the transformation of all service that is the purpose of the rogue Verizon Voice Link implementation, an implementation that should not be allowed to occur absent regulatory controls (such as those embodied in a true trial).–

The comments submitted by the CPUC also raise important concerns that the policy framework adopted by the FCC in support of technology transitions not interfere with state regulators' ability to administer state laws, such as those that set carrier of last resort ("COLR")

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[9] See, NTCA, at 3: "Over many years, through the process established pursuant to the 1996 Act, incumbents and competitors generally have developed relatively stable arrangements governing the interconnection of networks and the exchange of voice traffic. Any proposal that would unduly jeopardize the stability of those arrangements – from an operational perspective or a financial perspective – is likely to be cause for concern."

NTCA also states, "But creating a "trial" focused merely or even primarily on waiving this or that set of regulations would be simply 'putting the cart before the horse,' as only a full and complete understanding of the marketplace and what is already happening today can help inform which regulations should apply going forward, which regulations require modification to achieve the core statutory objectives in an all-IP world, and which regulations are either inapplicable or of little use in an IP interconnection environment." NTCA, at 8.

[10] MPSC, at 8.

[11] Sprint, at 5. Sprint observes that carriers already have experience exchanging voice traffic in IP format. Sprint, at 5, citing to Investigation by the Department on its Own Motion to Determine whether an Agreement entered into by Verizon New England Inc., d/b/a Verizon Massachusetts is an Interconnection Agreement under 47 U.S.C. § 251 Requiring the Agreement to be filed with the Department for Approval in Accordance with 47 U.S.C. § 252, Mass. Dep't. of Telecom and Cable, 13-6, at 9, (May 13, 2013) ("Mass. D.T.C. Verizon Investigation") ("Verizon MA does not dispute that it has entered into . . . an agreement for the exchange of VoIP traffic in IP format.").

[12] Sprint, at 17-18.

requirements and require approval for the retirement of network facilities.[13] Specifically, Consumer Advocates disagree with AT&T's preference for the FCC to allow industry to use their "best business judgment"[14] regarding copper retirement decisions. Telecommunications services continue to have public utility attributes: Private sector investment cost-benefit analyses will fail to take into consideration important shared public benefits such as economic development in rural areas (harmed by loss of DSL), public safety (harmed by deterioration of copper plant), and lack of urban/rural comparability (the quality of services varying significantly by community), among others. The FCC should not abandon its commitment to universal service principles by allowing ILECs to dictate the way in which they retire copper plant.

B. The FCC should not adopt the view, promoted by AT&T and Verizon, that deregulation is the natural consequence of IP and wireless network

AT&T continues to promote its version of a trial (an all-IP, wire center-based trial), intertwining its advocacy for eliminating regulatory oversight with its proposal.[15] AT&T's approach seems to be to strip consumers of regulatory protection, and then resurrect skeletal safeguards as the company deems necessary. Among other things, AT&T contends that, the Commission must sweep away rules that prevent carriers from retiring their legacy networks and services"[16] and recommends that the Commission rely on "general consumer-protection laws."[17] General consumer protection laws, which have co-existed for many years with telecommunications-specific regulatory frameworks, typically address only unfair, deceptive, or fraudulent practices in otherwise fully competitive markets. There is no basis to conclude that

[13] CPUC, at 10-11.

[14] AT&T, at 8-9.

[15] Id. at 15.

[16] Id. at 2.

[17] Id., at 6.

the introduction of IP technology obviates the need for the industry-specific consumer protection measures and regulatory safeguards that have been put in place over the years by the FCC and state public utility commissions. These safeguards are necessary to address consequences of market imperfections. These range from COLR obligations to the goals of just and reasonable rates, reasonable service quality, and universal service, as well as market distortions such as slamming, cramming, failure to complete rural calls, etc. It would be contrary to the public interest to dismantle these safeguards simply because carriers are handling traffic differently. Re-paving highways does not eliminate the need for traffic rules, nor does the migration to IP networks alter the need for consumer protection from markets that are not yet effectively competitive. Instead of starting from scratch, which would shift the burden to consumers to justify the need for each and every safeguard that exists, the burden should be on industry to demonstrate, with empirical evidence, where and why specific consumer protection measures have become obsolete.

Technological obsolescence – to the extent it surfaces – is entirely separate from regulatory obsolescence, and the former should not obscure the latter. Any trial that is conducted should encompass comprehensive data collection (regarding, for example, prices, costs, and network reliability). The FCC should not confuse the migration to IP technology with changes in market structure. The two matters should be examined separately. Certainly technological evolution can affect market structure, but it will not always lead to more competition and cannot be assumed to be a panacea for achieving a fully competitive market.

C. There is no evidence that fixing a date for a "flash-cut" approach to IP technology is in the public interest, and a decision of this magnitude can certainly not be considered while there are so many critical regulatory issues still to be resolved

AT&T urges the FCC to "authorize comprehensive, geographic trials without further delay, just as occurred in Wilmington in anticipation of the DTV transition."[18] AT&T's proposal envisions a "flash cut" to IP in the selected wire centers, an approach it claims worked well in the case of DTV. However, telecommunications networks can and do support multiple generations of technology simultaneously – a "flash cut" is not necessary. Consumer Advocates recommend that the FCC resist AT&T's plea for rushing into comprehensive geographic "trials" that would, according to AT&T, be not only involuntary but permanent.[19]

Consumer Advocates remain opposed to AT&T's proposal for an all-IP geographic trial.[20] Among the flaws in AT&T's proposal are the mandatory nature of the trial;[21] the implication that the trial must occur under conditions that eliminate legacy and "counterproductive" regulatory obligations,[22] including the fact that states regulators would be impeded from exercising their statutory COLR responsibilities. State PUCs and the FCC can assess (and indeed are assessing) which regulatory obligations continue to be relevant as the nation migrates increasingly to an IP environment. Consumer Advocates are not persuaded of the benefit of undertaking a trial to deliberate about the merits of specific regulatory overhead. AT&T indicates that it is preparing an "executable blueprint for all-IP trials in specific wire centers."[23] Consumer Advocates may address the merits of that specific blueprint when AT&T submits it, but urges the Commission to prevent AT&T from hijacking the Commission's attention from other pressing matters.

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[18] Id., at 4. AT&T overlooks the fact that the DTV transition involved essentially one-way transmission, whereas the IP transition for the telecommunications network has as its fundamental proposition multi-way transmission.

[19] Id., at 14-15.

[20] Id., at 11-16.

[21] Id., at 17-18.

[22] Id., at 12, 15.

[23] Id., at 15-16.

Verizon also overreaches with respect to deregulation of any transmission occurring over wireless, saying "Nor should trials serve as a means to circumvent Congress's deregulatory mandate under Section 332(c) of the Act by extending to wireless technologies legacy regulatory schemes that may have been appropriate for legacy networks in a different era."[24] Consumer Advocates strongly disagree that any "deregulatory mandate" applies to the use of wireless service for fixed local exchange access or under conditions of market failure.

III. BEFORE PROCEEDING, THE COMMISSION SHOULD CONSIDER WHETHER ALTERNATIVE APPROACHES WOULD BE MORE EFFECTIVE AND LESS DISRUPTIVE THAN THE PROPOSED TECHNOLOGY TRANSITION TRIALS.

Given the nearly unanimous view that the proposed trials could be costly and disruptive,[25] and that they may not be able to produce a realistic preview of the actual market conditions that would eventually exist, Consumer Advocates urge the Commission to consider, **for each proposed trial**, whether there are alternative approaches that would produce a higher benefit-to-cost result.

Consumer Advocates find compelling the arguments presented by several CLEC parties, as well as others, that technology issues are not what stands in the way of VoIP interconnection, but rather the lack of regulatory structures to enforce interconnection on just and reasonable terms.[26] Consumer Advocates are not persuaded by the assurances offered by AT&T,

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[24] Verizon and Verizon Wireless ("Verizon"), at 6.

[25] Comcast Corporation ("Comcast") offers tempered support for the VoIP trial: "If the Commission is persuaded that the trials involving VoIP described in the Public Notice would help to move the industry toward the ubiquitous use of IP for voice services, the FCC should encourage such initiatives." Comcast, at 2-3. Comcast supports NG 911 trials "[b]ecause the proposed trials appear likely to contribute to the timely deployment of the NG911 architecture." Comcast, at 7, cite omitted. Intrado, Inc. ("Intrado") supports NG911 trials, and offers specific suggestions for the design of such trials.

[26] CLEC Coalition at 4, 13-15; XO Communications LLC ("XO"), at 2; see also, CPUC at 6.

CenturyLink, and Verizon that market forces alone can be relied on to ensure equitable interconnection terms in agreements involving the large incumbent LECs.[27] Sprint explains:

> The major ILECs have thus far avoided their interconnection obligations by housing their IP operations outside their regulated ILEC companies and even by denying that Sections 251 and 252 govern IP-based voice service interconnection at all. Regardless of whether an ILEC has a retail VoIP offering, but hides the necessary IP interconnection functions and assets in a non-ILEC affiliate or an ILEC places both the retail VoIP offering and the IP interconnection functions and assets in a non-ILEC affiliate, the ILEC is subject to Sections 251 and 252.7 This "hide the ball" approach employed by the ILECs to escape pro-competitive interconnection obligations should not be condoned.[28]

Consumer Advocates agree that the Commission should maximize the use of existing sources of information, arising in many instances from actual commercial transactions, before attempting to collect information through costly and unavoidably artificial trial conditions. CLECs argue persuasively that since IP interconnection has actually been occurring for several years, a great deal of information can be gained by targeted data requests and the examination of existing IP interconnection agreements.[29] NTCA similarly recommends the use of "structured observations" from existing interconnection arrangements.[30]

Similarly, although the proposed NG-911 trial[31] appears to have less potential for disruption to consumers and the competitive market place than some of the other trials, the benefits of proceeding immediately with that trial should also be scrutinized. As some commenters point out, it is worth examining whether information sought by the Task Force

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[27] AT&T, at 7, 20-28; CenturyLink, at 19-23; Verizon, at 3. CenturyLink opposes any backstop of regulation, contending that the possibility of such intervention could "skew negotiations," "reduce the likelihood of voluntary negotiations," and "hinder experimentation." CenturyLink, at 19. CenturyLink opposes the FCC's establishment of dispute resolution procedures as well as anything that resembles reliance on the Section 251/252 framework. CenturyLink, at 19.

[28] Sprint, at 7, cites omitted.

[29] CLEC Coalition at 22-24; see also, XO at 2.

[30] NTCA at 4.

[31] Public Notice at 7.

already has been gathered, at least in part, in existing NG911-related proceedings, such as the Commission's own pending Framework for Next Generation 911 proceeding or the Department of Transportation's Next Generation 9-1-1 Initiative.[32] In addition, the CLEC Coalition reasonably asks "whether waiting until more Public Safety Answering Points ("PSAPs") have deployed NG911 may help reduce the number of issues that need to be studied in a trial or even obviate the need for a trial altogether."[33]

Finally, Consumer Advocates agree with the parties who perceive benefits in waiting for regulatory review of the ongoing Fire Island "trial" of wireless local exchange access (Verizon's Voice Link service) and the related investigation by the New York Public Service Commission,[34] as well as any forthcoming investigation by the New Jersey Board of Public Utilities regarding the New Jersey barrier islands[35] before launching any federal wireline-to-wireless trial. While Consumer Advocates agree with Public Knowledge that the Fire Island trial is a model of how *not* to proceed with a technology trial – having been rather precipitously sprung on consumers and the New York PSC by Verizon with little notice and no choice,[36] – it will generate useful, "real-world" information. It may be appropriate, however, for the FCC Task Force to add its

[32] AT&T, at 27-29; Sprint, at 13-17.

[33] CLEC Coalition at 4.

[34] Case 13-C-0197 – *Tariff filing by Verizon New York Inc. to introduce language under which Verizon could discontinue its current wireline service offerings in a specified area and instead offer a wireless service as its sole service offering in the area*, Notice Inviting Comments, issued May 21, 2013.

[35] Letter from Jim Dieterle, NJ State Director, AARP New Jersey, Evelyn Liebman, NJ Associate State Director, Advocacy, to the New Jersey Board of Public Utilities re Request for an Investigation: Verizon New Jersey Inc.'s plan to discontinue current wireline offerings and instead offer a wireless service as its sole service offering in the state of New Jersey, July 29, 2013. See also, 214 Application of Verizon New Jersey Inc. and Verizon New York Inc. to Discontinue Domestic Telecommunications Services, WC Docket Nos. 13-149 and 13-150, Comp. Pol. File Nos. 1112 and 115, Initial Comments of Rate Counsel, NASUCA and TURN, the Utility Reform Network submitted on July 29, 2013, in response to Public Notices DA 13-1474 (services in New Jersey) and DA 13-1475 (services on Fire Island in New York), released on June 28, 2013.

[36] Public Knowledge, at 4.

own data requests to those that have been posed by the Staff at the New York PSC,[37] in order to maximize the information from the existing trial.

IV. THE TECHNOLOGY TRANSITION SHOULD NOT PRODUCE COLLATERAL DAMAGE – INDEED, SHOULD PRODUCE BENEFITS – FOR CONSUMERS

Initial comments raise several common themes that concern the impact of trials on consumers and the corresponding role of state public utility commissions. Rate Counsel addressed many of these issues in initial comments and so does not elaborate extensively here. As NTCA observes, "There is little indication from the Public Notice whether the Commission envisions a 'regulatory backstop' that will ensure that the concepts of service quality, competition, consumer protection, and universal service do not inadvertently fall by the wayside."[38] Consumers should not be made worse off as a result of any trials that the Commission selects.

A. Consumer participation in trials should be voluntary and consumers should have the ability to have wireline service restored at end of trial.

Contrary to AT&T's Orwellian assertion that "it is critical that any trial of the migration to wireless-only services be structured with the assumption that the migration is both mandatory and permanent,"[39] consumers should not be forced to abandon their current service either on a temporary or permanent basis, particularly in the absence of adequate consumer protection

[37] In Case 13-C-0197, NY PSC Staff has issued three sets of discovery to Verizon thus far.

[38] NTCA, at 2.

[39] AT&T, at 7.

measures (public safety, compatibility with medical and alarm devices, etc.). Consumer participation in trials should be voluntary.[40]

Consumer Advocates urge the Commission to heed the recommendations of the City of New York ("NYC"), including, among others, that (1) "Any transition, including trial transitions, must be planned well in advance and must have triggers in place to preserve pricing and to preserve or improve services currently relied upon by consumers" – "[o]therwise, the transition may impact public safety, economic development and consumer affordability of relied upon services";[41](2) "companies should not be permitted to take advantage of natural or manmade disasters to impose new technologies with lesser services on an unprepared population";[42] and (3) any trials need to be structured so as not to endanger vulnerable populations.[43] Department of Defense/ All Other Federal Executive Agencies ("DoD/FEA") seeks assurances that no trial that might affect federal government operations will be conducted on a flash cut basis or disrupt any existing functionality.[44] For this reason, DoD/FEA insists that it be involved in the selection process for any trial that might affect its interests.[45]

Further, consumers should be fully informed and should have a voice in the design, implementation, and assessment of any trials that are conducted.[46] Consumer Advocates concur

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[40] Massachusetts Department of Telecommunications and Cable ("MDTC"), at 7; CPUC at 11; MPSC, at 5, 6. The CPUC states: "The Commission should be wary of carrier-initiated changes in service as part of a trial, which changes are not strictly voluntary from the consumer's point of view, or which involve mandatory change in customer premises equipment. The Commission should only allow such changes where full disclosure is required and consumer opt-out is allowed." CPUC, at 11.

[41] NYC, at 2.

[42] Id., at 3.

[43] Id., at 4.

[44] DoD/FEA, at 4-5.

[45] Id., at 5.

[46] AT&T also discusses how the FCC might address the needs of the disabled and of Lifeline customers. AT&T states that it "is committed to focusing on accessibility issues and working with the disabled community during and after the transition from TDM to all IP-based networks and services. However, the most effective way to examine

with state regulators' recommendation that consumers be fully informed about services offered through a trial. The MDTC states:

> A list of the service offerings, associated costs, and comparisons to their current wireline services for their new wireless services should also be provided to consumers in clear language. Such information would inform consumers of the differences between the service offering allowing them as trial participants to make informed choices and provide better feedback. Informing consumers and, when available, obtaining their voluntary participation are useful steps towards ensuring the goal of protecting consumers during and after the trials is met."[47]

Consumer Advocates support this proposal.

B. Customers have expressed an important interest in preserving the capabilities of TDM/copper network

Efforts to hasten customers' migration to wireless and IP networks may coincide with industry's strategic interests, but can lead to higher costs and a loss of functionality for customers. AARP states that at "a minimum, the end product of any technology migration should be an outcome where consumers receive services of similar or better quality at similar or lower prices."[48] The MDTC states that it "is essential to ensure that consumers continue to be able to obtain services with equivalent functionality and quality." [49]

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those important issues associated with providing access to next generation IP networks and services to the disabled community is through the wire center trials AT&T has proposed, not to conduct separate and far more limited disability trials." AT&T, at 32. Consumer Advocates are hopeful that *regardless* of whether the FCC approves of AT&T's blueprint for trials, AT&T and other carriers will focus on accessibility issues and, in so doing, will work with the disabled community. AT&T also raises various ideas for a Lifeline trial, including such elements as an independently conducted survey of low-income consumers' communications needs and preferences and a voucher. Id., at 34-36. Consumer Advocates welcome measures to ensure that Lifeline customers benefit from new technologies, provided that they are optional and adequately funded.

[47] MDTC, at 8. See also CPUC, at 7, recommending that consumers be provided with full disclosure of the differences in service.

[48] AARP, at 20.

[49] MDTC, at 4, footnote omitted.

Large customers (such as DoD/FEA and NYC) and small customers have expressed an interest in preserving the qualities and capabilities of the TDM/copper network. DoD/FEA states:

> DoD/FEA customers continue to rely heavily on wireline TDM-based networks and services and will do so for the foreseeable future. Therefore, the Commission should carefully consider potential adverse consequences on public safety and national security interests as a result of requiring DoD/FEA to prematurely transition to different technologies or services.[50]

DoD/FEA also expresses concern that wireless and IP-based networks may not provide certain network functionalities that the DoD/FEA customers rely on.[51] Similarly, NYC observes that the copper network is often sufficient and affordable for the city's needs, and observes further that service replacement can be costly for customers.[52]

C. Trials should not jeopardize consumers' public safety and should collect data regarding network reliability.

Consumer Advocates concur with initial comments that emphasize that trials should not jeopardize consumers' ability to have access to reliable telephone service, which is critical for

[50] DoD/FEA, at 1.

[51] Id., at 3.

[52] NYC, at 3.

their safety.[53] NYC states that: "All new technologies must maintain system resiliency, especially in respect to the system's ability to operate in the event of a power outage."[54] DoD/FEA states that trials should be conducted without disruption to national security,[55] and MDTC states that consumers should "be able to obtain services with equivalent functionality and quality."[56]

Any trials should compare the new service with the "legacy" service that it replaces. As the MDTC aptly observes, consumers would be able to compare their existing service options with new IP and wireless – and make their own informed choices – if new technologies were introduced side-by-side with existing networks.[57] That has been the case up to now. However, if this natural selection is not permitted to occur, it is all the more important to examine how the new services compare to consumers' existing options. Consumer Advocates concur with MDTC that "[t]he FCC should then develop metrics for comparing the services over the new networks to those services previously provided over the legacy network."[58]

Consumer Advocates also concur with Public Knowledge that, if the FCC embarks on trials, it should have "escape" procedures in case the trials go awry. "Finally, the plans for the pilot programs would not be complete without a set process for winding down the trials. The pilot programs may be small in scale compared to the rest of the country, but they will be

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[53] MPSC, at 2. Further, Public Knowledge states: "Network reliability will also be a key question during a wireline-to-wireless trial. In this respect, we must have detailed, public data regarding how often the new wireless network is up, when it goes down and for how long, and why any temporary outages happen. This information will necessarily have significant impact on any policy decisions going forward about the requisite device back-up power carriers must provide to their customers, but the Commission should also keep a close watch to ensure customers have adequate back-up power during the pilot program as well." Public Knowledge, at 12.

[54] NYC, at 5.

[55] See generally DoD/FEA, at 1, 3, 4-5.

[56] MDTC, at 4, footnote omitted.

[57] Id., at 4.

[58] Id., at 5.

impacting real customers who use the phone network to serve real needs. The Commission must therefore have a mechanism to determine what possible consumer harms would trigger an immediate end to the trials, and how the process of stopping the trials will be implemented."[59]

D. Transparency and sharing of data are key to any trials or assessments by the FCC of the impact of the migration to new technology.

Initial comments emphasize the importance of making data public. NTCA states:

> In addition, [trial data] should also be made public, and trial participants must not be allowed to request confidential treatment. Only through transparency can consumers, state commissions, and the FCC remain vigilant in holding participants accountable. Moreover, the failure to make the data public will rob the process of much of its value, as all stakeholders can gain valuable insight from a full disclosure of the results of these trials.[60]

State regulators point out the importance of state commissions' having access to data that the trials collect. MDTC states: "The FCC should also ensure that, at a minimum, data collected during the trials are shared with the state commissions throughout the trials so that states can develop appropriate policies to encourage the IP transition while maintaining their obligations, such as consumer protection and public safety."[61] If the FCC decides to forgo trials or delay them and to rely instead on data collected through other means (e.g., targeted data requests to industry), that data should also be fully available to states and consumer advocates.

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[59] Public Knowledge, at 10.

[60] NTCA, at 15. See also Public Knowledge, at 7.

[61] MDTC, at 2; see also, CPUC at 2.

V. THE FCC AND STATES SHOULD GUIDE THE TRANSITION, RATHER THAN INDUSTRY – LED BY LARGE INCUMBENTS.

Reliable, affordable access to telecommunications service continues to be essential for consumers' safety and welfare, and for the health of communities' economic development. Because of the significant public interest aspects of the nation's transition to IP networks, it is essential that the Commission, in collaboration and coordination with states, **guide** the transition rather than simply allowing industry – led by the large ILECs – to charge ahead. Consumer Advocates concur with Public Knowledge that "the Commission should make clear that carriers must seek permission before discontinuing or significantly changing their traditional wireline service to consumers."[62] To the extent that special considerations may apply to facilities affected by a "post-natural disaster" situation, Public Knowledge urges the Commission to create a separate process for handling these exceptions.[63]

Moreover, any FCC-sanctioned trials should not enable carriers to sidestep states' specific requirements and states' authority. The CPUC explains: "California's basic service rules allow a COLR to petition the CPUC to allow it to provide basic service via another technology, and a carrier may do so only after CPUC approval in a noticed proceeding. Carriers should be required to maintain the existing wireline infrastructure for the period of the trial, so that consumers who have subscribed to the trial have the option of returning to their existing service at the end of the trial."[64]

Consumer Advocates respectfully disagree with the recommendation of the Commission's Technology Advisory Council, which AT&T cites, that a date certain of 2018 be

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[62] Public Knowledge, at 12.

[63] Id.

[64] CPUC, at 8.

set for retiring the TDM-based PSTN.[65] Possibly through trials such as those envisioned by the FCC in this proceeding, through "structured observations" of real world events, and through evidence-based regulatory proceedings, the FCC, in collaboration with state regulators, should determine if, to what extent, and when it is in the public interest to retire the nation's TDM-based PSTN.[66] Consideration of public safety, universal service, and competition should inform this decision rather than any prematurely established deadline.

VI. CONCLUSION

Whether transitions occur within the framework of a trial or are permitted simply to evolve, as AARP states, at "a minimum, the end product of any technology migration should be an outcome where consumers receive services of similar or better quality at similar or lower prices."[67] Customers' migration to new technology should be voluntary.

The FCC, in coordination with state regulators, should dictate the parameters of the transition, and should modify regulatory oversight based on empirical evidence regarding the structure of relevant markets. During the transition, the FCC should not lose sight of the key goals of consumer protection, universal service, network reliability, consumer choice (if new technology will raise prices or jeopardize public safety), affordability, and the interconnection of carriers' networks at reasonable rates, terms and conditions.

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[65] AT&T, at 1, citing Technology Advisory Council, *Status of Recommendations*, at 11, 15-16 (June 29, 2011), http://transition.fcc.gov/oet/tac/TACJune2011mtgfullpresentation.pdf.

[66] Further, it is uncertain how quickly industry will be prepared to complete the transition to IP networks. CenturyLink states: "Given its expansive legacy network, CenturyLink's transition to IP will take a number of years in many markets." CenturyLink, at 16, cite omitted.

[67] AARP, at 20.

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